

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC 09M-57

In the Matter of)	
)	
PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP)	EB Docket No. 07-147
)	
PREFERRED COMMUNICATION SYSTEMS, INC.)	File No. EB-06-IH-2112
)	NAL/Acct. No. 200732080025
)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service)	FRN No. 0003769049
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses in the 800 MHz Specialized Mobile Radio Service)	
)	

MEMORANDUM OPINION AND ORDER

Issued: September 25, 2009

Released: September 25, 2009

1. The history of settlement efforts is comprehensively reported in Settlement Fact Statements that were filed by the parties as directed. *See Order FCC 09M-53*, released August 20, 2009. These statements report the following.

Fact Statements

2. The Enforcement Bureau and all non-government parties have been engaged in negotiations since July 2008. In March 2009, negotiations peaked and the parties, including Pendleton C. Waugh, requested a stay of proceedings in order to focus on settlement. Time requested was immediately granted. *Order FCC 09M-27*. Mr. Waugh was included in those settlement negotiations. The Bureau represents with vigor that no one excluded Mr. Waugh from negotiations, or concealed the possibility of a settlement, or excluded him as a signatory. *See Enforcement Bureau's Fact Statement at 11, passim.*¹

3. On June 10, 2009, the parties (including Mr. Waugh) filed a Second Joint Status Report which announced a "significant breakthrough" in negotiations. The parties sought yet

¹ For example, in a telephone call made on July 31, 2009, Mr. Waugh was alerted by Bureau counsel of intentions to proceed to settlement with or without his participation. On August 5, 2009, Bureau counsel again informed Mr. Waugh's counsel that a settlement without his client was then imminent.

more time to negotiate a settlement which was then thought to be “very close.” *See Order FCC 09M-44*. But then Mr. Waugh inserted demands (1) that the Bureau intercede with FCC general counsel in pending civil litigation, and (2) that the Bureau intercede with the Wireless Telecommunications Bureau that was considering a waiver that was of interest to Mr. Waugh as well as the corporate Preferred parties.

4. On August 6, 2009, by *Order FCC 09M-51*, the Presiding Judge granted a Joint Motion to Accept Settlement Agreement and Termination of Proceeding. He also accepted and approved the Settlement Agreement.²*Id.* The signatories to the Settlement Agreement do not admit to any violations of the Communication Acts or any Commission Rule as alleged in the *Order to Show Cause* (FCC 07-125). Mr. Waugh would not sign the Settlement Agreement because it precludes him from future employment with PCSI or PAI, and prohibits issuance of Preferred stock to him or to a temporary trust. Mr. Bishop, who did sign, is also precluded from future employment with PCSI or PAI, and from receiving Preferred stock.

5. Also, on August 6, 2009, Mr. Waugh filed a Motion for Partial Summary Decision, pertaining only to himself, which prompted the Presiding Judge to convene on September 9,³ a conference to “discuss procedures to terminate this case” without a hearing, *i.e.*, a universal settlement.⁴ At the conclusion of the Conference it appeared that a solution had been reached by simply (1) having Mr. Waugh drop his demand for unprecedented Enforcement Bureau intervention with other Commission entities, and (2) adding a *proviso* to the Settlement Agreement that prohibitions of stock issuance to Mr. Waugh and/or Mr. Bishop would be subject to challenge in a court of competent jurisdiction, with rights of appeal. *See Order FCC 09M-56*, released September 2009.

Discussion

6. Mr. Waugh’s counsel was positive about settlement at the close of the Conference.

Mr. Silva: [The Presiding Judge’s] suggestion I think was very good. We leave it up to the local court. He [Mr. Waugh] gets whatever he’s entitled to by a local court. --- That resolves the case.

See September 9 Conference at Tr. 207-208, 215. He also agreed that peripheral demands that the Enforcement Bureau intercede with OGC and WTB would be dropped. *Id.* at 214. The Bureau’s counsel concurred.⁵ *See September 9 Conference at Tr. 212-213, 215.* Mr. Austin also concurred. *Id.* at Tr. 217. The Presiding Judge, the Enforcement Bureau, and the cooperating non-government parties have gone the extra mile to accommodate Mr. Waugh, only to be rejected by Mr. Waugh. Unfortunately, settlement that includes Mr. Waugh apparently is not meant to be.

² The signatories to the Settlement Agreement are the Enforcement Bureau, Preferred Communications Systems, Inc. (“PCSI”), Preferred Acquisitions, Inc. (“PAI”), Charles M. Austin, and Jay R. Bishop. There was no signature line set for Mr. Waugh in the version of the Settlement Agreement that was presented to the Presiding Judge.

³ *See Order FCC 09M-56*, released September 10, 2009.

⁴ *See September 9 Conference at Tr. 88-230.*

⁵ It was however, clear that final decisions for changes would be made by the Bureau Chief and Mr. Waugh.

Conclusion

7. The Enforcement Bureau filed its Status Report on September 21, 2009, as directed. Mr. Waugh filed none.⁶ The Bureau reports that Mr. Waugh now demands “further, significant modification” to the Settlement Agreement as conditions for joining the Settlement Agreement, even with the aforementioned *proviso*. In his letter to the Presiding Judge dated September 16, 2009, Mr. Waugh even asks for “deferral of all further settlement negotiation” pending disposition of unidentified litigation in a Delaware court. To grant one party’s opposed request for an indefinite hold on a Commission proceeding that is dependent upon another court’s decisional schedule would be irresponsible management of Commission business.

8. The Presiding Judge has made reasonable effort to accommodate Mr. Waugh, including a two hour settlement conference to hear fully his position on settlement. There is no reason to spend further time or for keeping this proceeding open. The Settlement Agreement is reasonable and advantageous to the public interest. Mr. Waugh has been given more than ample opportunity to participate. The government shall receive from PCSI and PAI a voluntary payment of \$100,000. Mr. Bishop, a felon found guilty of tax fraud, will no longer be associated with or employed by PCSI or PAI. Mr. Waugh, a felon convicted of securities fraud, will also be precluded from further association with or employment by PCSI or PAI.⁷ Complex and time consuming issues that were set in the *Order to Show Cause* need not be litigated at this time (unauthorized transfer of control, undisclosed (Waugh) real party in interest, misrepresentation and/or lack of candor, effect of felony convictions of Messrs. Waugh and Bishop, accuracy of Commission filings, failures to respond fully to official requests for information, and illegal cessation of operations of licensed facilities).⁸

Rulings

Accordingly, IT IS ORDERED that *Order* FCC 09M-53 placing *Order* FCC 09M-51 in abeyance IS HEREBY CANCELLED.

⁶ Mr. Waugh’s counsel sent a letter to the Presiding Judge dated September 16, 2009, which questions the Presiding Judge’s jurisdiction over settlement approval, and erroneously suggests non-compliance with §1.93(b) (consent orders). Enforcement Bureau counsel responded by letter to the Presiding Judge dated September, 17, 2009, successfully addressing Mr. Waugh’s questions of jurisdiction and citing authorities for resolving Commission proceedings by settlement where disqualifying issues remain unresolved. *See e.g. Kurtis J. Kintzel et al, Order* FCC 09M-52, released August 6, 2009, cited by Enforcement Bureau.

⁷ Mr. Waugh would like to wipe clean his criminal slate with the FCC through a partial summary decision. But the issues against Mr. Waugh, except for his admitted felony conviction, are highly fact intensive requiring discovery, witness testimony, and credibility findings. Therefore, a partial summary decision on all issues set against Mr. Waugh would not be appropriate.

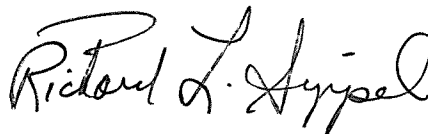
⁸ Recall that a motion for summary decision may only be filed with permission of a presiding judge. 47 CFR §1.251(2). While Mr. Waugh has no right to demand a summary decision, should he later obtain a controlling stock interest in the Preferred entities through state court contract enforcement, and later seeks presence on boards of directors, licensing qualifications could be challenged by the Enforcement Bureau in another proceeding. Therefore, unresolved Waugh qualification issues could be later dealt with and resolved in another proceeding if necessary. *See e.g. LaStar Cellular Tele. Co.* 11 FCC Rcd. 1059, 1061 (1996). (consent decree could not be approved which purports to resolve potential character qualifications) (summary decision in *Wisconsin* 8 case resolves qualifying issues originally raised in *LaStar* proceeding).

IT IS FURTHER ORDERED that *Order* FCC 09M-51 granting Joint Motion and Joint Request, accepting and approving Settlement Agreement, and Terminating Case IS HEREBY RENEWED with full force and effect.

IT IS ALSO ORDERED that Enforcement Bureau counsel SHALL FILE as attachments to an appropriate pleading (1) Pendleton C. Waugh's letter dated September 16, 2009 and (2) Enforcement Bureau's responsive letter dated September 17, 2009.

IT IS FINALLY ORDERED that all pending motions and conference requests remain moot, and this proceeding IS HEREBY RETERMINATED.⁹

FEDERAL COMMUNICATIONS COMMISSION¹⁰

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive, flowing style with a large initial 'R'.

Richard L. Sippel
Chief Administrative Law Judge

⁹ Appeals to the Commission may be filed, renewed, or refiled in accordance with Rules of Practice. *See* 47 CFR §1.301(a)(b)(c).

¹⁰ Courtesy copies of this *Order* are sent to counsel by e-mail upon issuance.